IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPLICATION NO.5416 OF 2004
IN
CRIMINAL APPEAL NO.189 OF 2002

Nazim Ahmed Nasiruddin Ansari
and anr. .. Petitioners
(Org.Accd.Nos.
3 and 7)

Vs.

The State of Maharashtra .. Respondent

Mr. Haji Panna with Mr. S.R. Pasbola for Petitioners.
Mr. D.P. Adsule, APP for State.

CORAM : S.S. PARKAR, J.

Date : December 21, 2004.

P.C.:

1. Heard both sides. This application is made for petitioners' release on bail pending the hearing of the appeal for the second time. Both these petitioners have been convicted for offence under Section 307 of IPC and under the provisions of M.C.O.C. Act. The maximum sentence which is awarded to these two petitioners - original accused nos.3 and 7 is seven years' imprisonment. The earlier application for bail made by these two petitioners was rejected by my order dated 30th September, 2003 in Criminal Application No.3433 of 2003.

2. On 30th September, 2003 when the application for bail was rejected the petitioners were stated to be in custody for more than 4 years. In ground (xi) of this application it is stated that the petitioner no.1 is in custody since about 5 1/2 years whereas the petitioner no.2 is in custody since 3 1/2 years. Mr. Panna states that petitioner no.1 was taken into custody on 17th June 1999. He has annexed the copy of my order dated 12th August 2003 granting bail to co-accused Mittalkumar Bhanwarlal Jain in Criminal Application No.2256 of 2003 who was awarded sentence of five years under the provisions of M.C.O.C. Act and that time was stated to have been in custody for a period of four years from the date of his arrest till 12th August, 2003 when the order of his release on bail was passed. He submits that since the petitioner no.1 is in custody for 5 1/2 years out of the maximum seven years' imprisonment imposed on him he may be released on bail. Considering that the petitioner no.2 is in custody for about 3 1/2 years, as stated in the application itself, he has not pressed the application for bail on behalf of petitioner no.2.

3. In view of the fact that petitioner no.1 is in custody for major portion of the sentence imposed on him in the case which is the subject matter of the

appeal pending in this court and there is no prospect of the appeal being heard in immediate future, inspite of my previous direction to fix the appeal for hearing in January 2004. The appeal is not placed for hearing as yet. The liberty was given to the petitioners to renew application for bail in case appeal was not disposed of by April 2004. In the circumstances, it would be desirable to release the petitioner no.1 on bail.

4. In the result, the prayer for bail made on behalf of petitioner no.2 is rejected as not pressed. The prayer for bail made on behalf of the petitioner no.1 is granted and the petitioner no.1 - Nazim Ahmed Nasiruddin Ansari is directed to be released on bail in the sum of Rs.30,000/- with one or two sureties to make up the amount on condition that he shall report to Sakinaka Police Station once in a month until further orders. Application stands disposed of accordingly.

(S.S. Parkar, J.)